

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 05-15915

'ILIO'ULAOKALANI COALITION; NĀ 'IMI PONO; and KĪPUKA,

Plaintiffs-Appellants,

v.

DONALD H. RUMSFELD, Secretary of Defense; and FRANCIS J. HARVEY, Secretary of the United States Department of the Army,

Defendants-Appellees.

On Appeal From the United States District Court for the District of Hawaii
(Civil No. 04-00502 DAE BMK)

**DECLARATION OF KAI MARKELL IN SUPPORT OF
AMICUS CURIAE BRIEF OF THE OFFICE OF HAWAIIAN AFFAIRS**

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EXHIBIT 9

I, KAI MARKELL, declare that if called as a witness in this action I could testify of my own personal knowledge as follows:

1. I have been involved, through family, community and work-related activities, in the protection and repatriation of ancestral indigenous Hawaiian burial sites since the age of five.

2. I am currently employed by the Office of Hawaiian Affairs ("OHA") as Lead Advocate for Culture in the Native Rights, Land and Culture Division of OHA.

3. In my capacity as Lead Advocate of Culture, I oversee a multitude of responsibilities covering the review of environmental impact studies, cultural impact assessments, the drafting and implementation of the OHA Cultural Plan, addressing and implementing OHA Board of Trustees cultural initiatives, and many other culturally related duties and responsibilities.

4. For the past several years, my duties have involved monitoring and analyzing the United States Army's activities relating to its planned Stryker Brigade transformation on the Island of Oahu, State of Hawai'i. Part of my work has involved personal contact with the Cultural Monitors assigned to evaluate the impact of the Army's Stryker related activities on cultural and natural resources and the implementation of the 2004 Programmatic Agreement signed by the Army which was intended to ensure compliance with National Historic Preservation Act

("NHPA") requirements.

5. Based on my communications with Cultural Monitors and Army representatives and based on my review of documents relevant to the Army's Stryker related activities, it is my opinion that the Army has repeatedly acted in violation of the Programmatic Agreement and has been slow to respond, if at all, to concerns raised by OHA and the Cultural Monitors relating to these violations. The violations are serious and have already caused irreparable harm to cultural and natural resources in the subject area.

6. I have personally viewed the Hale'au'au Heiau site and estimate that the core of the heiau is approximately 30 feet in diameter. Army earth moving activities appear to have damaged some parts of the larger complex surrounding the core heiau.

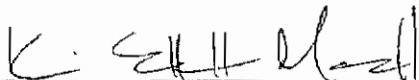
7. The Lihu'e area of Oahu, which includes the land upon which Stryker activity would occur, is associated with legendary Hawaiian royalty and is close to one of only two known Royal Birthing Centers in the Hawaiian islands (the other being in Wailua on the island of Kaua'i), where the children of ali'i (the chiefs and nobles of Hawaiian society) were born. Because of its nature as a Royal Birthing Center, the area is also known as the "piko" (Hawaiian word for navel) or life and *mana* sustaining source of the island of Oahu.

8. On October 5, 2006, OHA sent a letter to Colonel Killian, Garrison

Commander of Schofield Barracks, providing a lengthy list of concerns regarding the Army's failure to adequately protect and mitigate damage to cultural and natural resources. A true and correct copy of OHA's October 5, 2006 letter is attached to OHA's *amicus curiae* brief as Exhibit "A." As of the date of this Declaration, OHA has not received any response to its October 5 letter, and OHA is extremely concerned that the Army's practices will continue to cause irreparable harm to cultural and natural resources. Such harm presently appears inevitable unless the Army is compelled to alter its current destructive practices.

I declare under penalty of perjury that I have read the foregoing declaration and know the contents thereof to be true of my own knowledge.

Dated: Honolulu, Hawai'i, October 25, 2006.



KAI MARKELL